

APPEAL NO. 040982  
FILED JUNE 18, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 23, 2004. The hearing officer resolved the disputed issue by deciding that the Texas Workers' Compensation Commission (Commission)-appointed designated doctor was not appropriate for the issue in question and the appellant's (claimant) actual medical condition and that the claimant's failure to object to the appointment of that doctor prior to the designated doctor's physical examination of the claimant operates as a waiver of the right to object and now estops the claimant from disputing that appointment. The claimant appealed, arguing that the hearing officer's determination that the claimant is estopped from disputing the appointment is so against the great weight and preponderance of the evidence as to warrant a reversal. The claimant contends that he cannot waive his right with regards to the designated doctor. The appeal file does not contain a response from the respondent (carrier).

DECISION

Reversed and remanded.

It was undisputed that the claimant sustained a compensable injury on \_\_\_\_\_. The carrier initially accepted a lumbar injury but disputed a thoracic spine injury. It was undisputed that the thoracic spine injury was later determined to be part of the compensable injury in a district court proceeding. The medical records in evidence reflect that the claimant had spinal surgery on February 12, 2004. The Commission-selected designated doctor examined the claimant on September 17, 2003, and subsequently certified that the claimant reached maximum medical improvement (MMI) on the date of statutory MMI, July 4, 2003, and assessed a 5% impairment rating (IR). The hearing officer found that on October 29, 2003, the claimant filed a Request for Benefit Review Conference [BRC] (TWCC-45) requesting a BRC for the reason that the chiropractor designated doctor was not qualified to serve as a designated doctor and requested appointment of a new one.

The hearing officer found that the claimant is estopped from objecting to the appointment of the designated doctor and has waived the right to object to that appointment because he did not raise a complaint concerning the chiropractor's appointment until after that designated doctor examined the claimant and assigned a 5% IR that mirrored the chiropractor treating doctor's rating. We disagree. Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(d)(2) (Rule 130.5(d)(2)) the Commission is charged with the responsibility of ensuring that a designated doctor is still qualified before scheduling an appointment with the designated doctor to reexamine the claimant. We noted in Texas Workers' Compensation Commission Appeal No. 022277, decided October 23, 2002, that we find no authority for relieving the Commission of its obligation in that regard, even if the party's challenge to the

qualifications of the designated doctor comes after the results of the examination are known. Similarly, the Commission has an obligation to appoint a qualified designated doctor for the initial examination. We reverse the hearing officer's determination that the claimant's failure to object to the appointment of that doctor prior to the designated doctor's physical examination of the claimant operates as a waiver of the right to object and now estops the claimant from disputing that appointment and render a determination that the claimant's failure to object to the appointment of that doctor prior to the designated doctor's physical examination of the claimant does not operate as a waiver of the right to object.

The hearing officer's determination that the Commission-appointed designated doctor was not appropriate for the issue in question and the claimant's actual medical condition at the time of appointment and subsequent examination was not appealed and has become final. Therefore, we remand this case for the appointment of a second designated doctor.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Edward Vilano  
Appeals Judge